IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 09-34
v.	:	
SHEKIA MYERS	:	

GOVERNMENT'S SENTENCING MEMORANDUM

The defendant pled guilty to a six count indictment, which charged her with making a false statement in the acquisition of a firearm, in violation of 18 U.S.C. § 924(a)(1)(A), arising from her actions in making false statements while purchasing six firearms.

The advisory sentencing guideline range is 10-16 months.

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

> (1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker.
>
> (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-Booker case law, which continues to have advisory force.
>
> (3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir.

2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). See also United States v. Smalley, 517 F.3d 208, 211-212 (3d Cir. 2008) (stating that the Gunter directive is consistent with later Supreme Court decisions). In calculating the guideline range, this Court must make findings pertinent to the guideline calculation by applying the preponderance of the evidence standard, in the same fashion as was employed prior to the Booker decision. United States v. Grier, 475 F.3d 556 (3d Cir. 2007) (en banc). The failure to properly calculate the advisory guideline range will rarely be harmless error. United States v. Langford, 516 F.3d 205, 214-219 (3d Cir. 2008).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. "The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises 'a ground of recognized legal merit (provided it has a factual basis)' and the court fails to address it." Cooper, 437 F.3d at 329. See also Rita v. United States, 127 S. Ct. 2456, 2468 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."); United States v. Schweitzer, 454 F.3d 197, 205-06 (3d Cir. 2006).

The government explains below its view of the proper consideration in this case of the advisory guideline range and of the Section 3553(a) factors.

I. BACKGROUND

The facts of this case are fully set out in the Presentence Report and are not repeated here.

SENTENCING CALCULATION.

A. Statutory Maximum Sentence.

The maximum penalty for a violation of 18 U.S.C. § 924(a)(1)(A) is five years in prison, three years supervised release, a $250,000 fine, and a $100 special assessment. In this case, counts one through four merge at sentencing as all of the firearms in those counts were purchased at the same time from the same firearms dealer, although each firearm was purchased based on a separate firearms application.

B. Sentencing Guidelines Calculation.

1. Calculation of the Sentencing Guidelines

(a) The defendant's base offense level is 12 pursuant to USSG § 2K2.1(a)(7);

(b) The offense involved three firearms, and therefore the defendant's guideline range should be increased by 2-levels pursuant to USSG §2K2.1(b)(1)(A).

(c) The defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).

The defendant is in Criminal History Category I, guideline level 12, and the guideline range is 10-16 months.

2. Departures from the sentencing guidelines

____________There is no basis to depart from the sentencing guidelines.

3. Consideration of the 3553(a) Factors

After determining the appropriate sentencing guideline range, the Court must consider all of the sentencing factors set forth in 18 U.S.C. § 3553(a). The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). As will be discussed later, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

Section 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[1] Each of the 3553(a) factors are discussed below:

[1] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

In this case, the offense is very serious. The defendant was a straw purchaser for multiple firearms, some of which ended up in the hands of dangerous individuals. The defendant's actions in obtaining firearms for those who could not or wished not to obtain firearms in their own name simultaneously enabled those criminals and obstructed the ability of law enforcement to trace those firearms to those responsible for crimes committed with them. There are no characteristics of the defendant which mitigate against the seriousness of this crime.

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

The offense in this case is serious, and requires a sentence that reflects the seriousness of the offense, and provides a deterrent to others who would obtain firearms as straw purchasers for criminals.

(C) to protect the public from further crimes of the defendant;

The government has no reason to believe that the public requires protection from the defendant.

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

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the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

The defendant is in great need of educational and/or vocational training. She appears to have led an extremely unstable life, and likely is in need of mental health and/or substantive abuse treatment.

(3) the kinds of sentences available;

As stated previously, the defendant is subject to a prison sentence. She could also receive a fine. The defendant could also receive supervised release with or without a home confinement condition, or probation.

(4) the kinds of sentence and the sentencing range established for--

> *(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines . . . issued by the Sentencing Commission . . . that . . . is in effect on the date the defendant is sentenced; . . .*

(5) any pertinent policy statement . . . issued by the Sentencing Commission . . . that . . . is in effect on the date the defendant is sentenced.

The defendant is in Criminal History Category I, guideline level 12, and the guideline range is 10-16 months.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

A sentence in the guideline range will avoid unwarranted disparities among defendants with similar records who have been found guilty of similar conduct.

(7) the need to provide restitution to any victims of the offense.

The defendant does need to pay restitution in this case.

Therefore, in sum, all of the appropriate considerations of sentencing favor the imposition in this case of a prison sentence in the advisory sentencing guideline range.

IV. CONCLUSION

For all of the above reasons, the government respectfully recommends that the Court sentence the defendant within the applicable guideline range. In addition, the government submits that a lengthy period of supervision is appropriate in this case. Special conditions of supervision should include mental health and/or substance abuse treatment, and a requirement that the defendant participate in educational and/or vocational training as directed by the probation office.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the Government's Sentencing memorandum was served by hand delivery on July 8, 2009 on:

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